

The Supervisor's Role Determining Essential Job Functions

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Introduction:

Supervisors for the State of California should be familiar with the employment provisions of the Americans with Disabilities Act (ADA). Specifically, one should know how to determine essential job functions and how they affect the employees that one supervises. This booklet gives a brief overview of the ADA and provides basic information to help supervisors determine which job tasks are considered essential.

Please take the time to read this booklet and refer to it whenever questions arise about determining essential job functions.

Background: What is the Americans with Disabilities Act (ADA)?

The ADA is a comprehensive anti-discrimination law for persons with disabilities. It extends to virtually all sectors of society and every aspect of daily living -- work, leisure, travel, communications, and more. The Act provides basic civil rights protection to persons with disabilities comparable to those in force for women and ethnic minorities for the past 25 years. The ADA is expected to benefit an estimated 49 million Americans with disabilities, including nearly 4.5 million Californians, with some 900 known disabilities.

Following is a brief synopsis of the five titles of the ADA.

Title I: Employment

Title I of the ADA requires that employers with 15 or more employees ensure their employment practices do not discriminate against qualified persons with disabilities in the application and recruitment processes, hiring, advancement, training, compensation or discharge of an employee, or in any other terms, conditions and privileges of employment. Under the law, employers must not refuse employment to a qualified person with a disability based on that person's disability, who, with or without reasonable accommodations, can perform the *essential functions* of the job. Reasonable accommodation may not be required if it creates an undue hardship to the employer.

Title II: Public Services

Title II prohibits state and local governments from discriminating against persons with disabilities or from excluding participation or denying benefits of programs, services or activities to persons with disabilities. Public sector entities should have completed a Transition Plan for barrier removal to guarantee program access by July 26, 1992, and must have completed a full Self-Evaluation of all policies and practices by January 26, 1993.

Beginning January 26, 1992, Title II prohibited all public agencies, regardless of the size of their work force, from discriminating in their employment practices against qualified individuals with disabilities. Regulation of public sector

compliance, both for programs and for employment, rests with a number of federal agencies. The U. S. Department of Justice can refer inquiries to the appropriate agency about compliance.

Title II also covers transportation services by requiring that all private and public transportation systems be accessible to all people, including individuals with disabilities. All new buses, rail and subway cars (one car per train) are required to be accessible including lifts for people who use wheelchairs. Retrofitting of existing buses is not required.

While some of these provisions took effect immediately, most were phased in through 1996. Regulation of the transportation provisions falls under the jurisdiction of the U.S. Department of Transportation.

Title III: Private Sector Services

Title III requires places of public accommodation to be accessible to and usable by people with disabilities. Private businesses must not discriminate in the "goods, services, facilities, procedures, and privileges, advantages and accommodations" offered to the public. Places of public accommodation include motels, restaurants, bars, movie theaters, convention centers, grocery stores, clothing stores, malls, museums, libraries, gyms, bowling alleys, amusement parks, or just about any other facility commonly used by the general public. Compliance of all aspects of public accommodations rests with the U. S. Department of Justice. The effective date for Title III was January 26, 1992.

Title IV: Telecommunications

The ADA requires common carriers offering telephone services to the general public to increase the availability of interstate and intrastate telecommunication relay services to individuals with hearing and speech impairments. All common carriers of telephone services must offer non-voice relay services which interface with voice services. Compliance rests with the Federal Communications Commission. The effective date for Title IV was July 26, 1993.

Title V: Miscellaneous Provisions

Title V contains several miscellaneous provisions such as:

1. The ADA cannot be construed to apply a lesser standard of compliance than does the Rehabilitation Act of 1973.
2. The ADA does not limit or invalidate any other federal or state law which provides equal or greater protection.
3. The ADA does not affect smoking restrictions, OSHA requirements or employee drug testing programs.
4. The ADA does not affect current state laws and policies governing insurance, or limit valid underwriting procedures based on risk classification.
5. Title V explicitly prohibits coercion, intimidation, or threats against persons exercising their rights under the ADA.

6. Title V establishes specific responsibilities for the adoption of regulations by federal agencies as well as technical assistance.
7. Title V excludes from protection those conditions which are related solely to sexual identity, but not disability.
8. Title V also excludes from coverage active drug users but prohibits discrimination against those who are perceived as having a disability by reason of a drug history, have participated in a supervised drug rehabilitation program, or are erroneously regarded as engaging in such use.

Although Title V is a miscellaneous Title, the primary responsible department for its regulation is the U.S. Department of Justice.

Definition of Essential Job Functions:

To be protected under Title I of the ADA, an employee must have a disability and also be qualified to perform the essential job functions with or without reasonable accommodation. This means two things. First, the employee with a disability must satisfy the employer's requirements for the job, such as education, employment experience, skills or licenses. Second, the employee with a disability must be able to perform the essential job functions with or without reasonable accommodation.

The term "essential functions" means the fundamental job duties of the employment position the individual with a disability holds or desires. The term does not include the *marginal* functions of the

position. Supervisors should carefully examine each job or position for which they have direct supervisory responsibility to determine which functions or tasks are essential to perform. This is particularly important before taking an employment action such as recruiting, advertising, hiring, promoting or firing.

Definition of Marginal Job Functions:

As an analysis of the essential functions of the job is conducted, an employer will also identify functions that are performed but are not essential as defined above. Such duties can be characterized as *marginal* functions. In supervising employees with disabilities, it may be necessary to reassign or trade marginal functions among employees within a given work site. This would be done so that one employee would receive the marginal functions that an employee with a disability was not able to perform. In turn, the employee with a disability would normally receive marginal functions which they could perform. It is important to note that it is not the intent of such restructuring effort to relieve an employee with a disability of his/her work load or to assign undesirable tasks based on disability or a lack of disability.

What Should An Employer Consider When Determining Essential Job Functions:

As with much of the ADA, deciding what is an essential function will be determined on a case-by-case basis. The Equal Employment Opportunity Commission (EEOC) regulation §1630.2(n)(3) provides a partial list of the factors to be considered when determining if a particular job function is essential. These include:

- (a) the employer's judgment as to which functions are essential;
- (b) written job descriptions prepared before advertising or interviewing applicants for a position;
- (c) the amount of time spent performing the function;
- (d) the consequences of not requiring an incumbent to perform the function;
- (e) terms of a collective bargaining agreement (if it does not violate the ADA);
- (f) work experience of past incumbents in the job;
- (g) and current work experience of incumbents in similar jobs.

What Makes A Job Function Essential:

A job function may be considered "essential" for any number of reasons, including, but not limited to, the following:

- (a) The function may be essential as the position exists solely to perform that function.

Example: An employee is hired as a proofreader. The ability to proofread accurately is an essential function, because this is the reason why the position exists.

- (b) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.

Example: An office has three clerical staff who have the responsibility of answering telephones, posting invoices, typing, etc. Of the three clerical, one cannot answer telephones due to a disability. Because there are two other clerical personnel within the office who can answer the telephones, the task would not be considered essential. However, if the same office had only one clerical person, it would be considered essential that the person be able to answer the telephone.

- (c) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

Example: An agency wants a computer database system developed to track procurement expenditures. For this position, the person hired would have to be knowledgeable in programming a computer. Skill in computer programming would then be considered an essential function of the job.

Purposes for Determining Essential Job Functions:

- 1) Within the selection process, each supervisor wants to select the candidate who is most capable of performing the job. When a supervisor focuses the selection process on who is

best able to perform the essential functions of the job, the selection process will more likely result in hiring a productive employee.

- 2) An understanding of essential job functions assists a supervisor in the selection process in creating legal and appropriate interview questions and selection techniques.
- 3) In communicating the essential job functions through a duty statement, an employer should outline clear and concise expectations of the employee.
- 4) The evaluation of performance, in conjunction with the essential job functions clearly focuses the employee and supervisor on the performance requirements of the job as well as the employee's strengths and weaknesses in performing it.
- 5) Under the Americans with Disabilities Act, supervisors might be called upon, at any point in the employment relationship, to provide reasonable accommodations so that an employee can perform the essential functions of his/her job. If the supervisor does not understand the essential functions of the job in question, an appropriate analysis of a reasonable accommodation request is not possible.
- 6) Should it be necessary for an employer to order a fitness for duty examination, it is critical that the examining medical practitioner be provided with an accurate description of the essential job functions that must be performed. Short of this, it is not possible for the examination process to determine an

employee's fitness for duty without knowing what duties are essential to performance.

- 7) Understanding the essential functions of a position is of central importance to the administration of a return to work program. If the employer does not understand what outcome is expected from the position, it is not possible to determine whether the employee's impairment, with or without a reasonable accommodation, will result in an appropriate performance outcome.
- 8) A statement of essential job functions within a duty statement signed by the employee is evidence that the expectations of the position have been communicated.

Summary:

Although the ADA does not require formal written analysis of essential job functions, it can be critical to an employer's appropriate management of employees in general as well as employees with disabilities specifically. The Department of Rehabilitation has been designated by Governor Wilson to serve as lead agency in the state of California's ADA implementation efforts. To that end, the Department has established an ADA Implementation Unit that is available for technical assistance, consultation, training and education for state agencies and those individuals seeking information on a wide variety of ADA related topics. The ADA Implementation Unit can be reached at (916) 263-8674 (Voice), or (916) 263-8672 (TTY).

